

New York State Department of Taxation and Finance  
**Office of Tax Policy Analysis**  
**Taxpayer Guidance Division**

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Sales Tax  
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**Requirement to Register as a Sales Tax Vendor for Out-of-State Companies  
Soliciting Sales Through Representatives**

This memorandum explains the Tax Department's policy regarding the requirement of certain businesses that make taxable sales of tangible personal property or services to register as vendors for New York State sales tax purposes, and to collect New York State and local sales taxes. Specifically, this memorandum explains the application of the sales tax law and regulations to e-commerce retailers who use independent contractors, agents, or other representatives (representatives) within New York State to solicit sales or to make or maintain a market for their products or services.

E-commerce retailers may use persons who act as representatives to solicit sales or to make or maintain a market in return for commissions, referral fees or other types of compensation. The agreement between the e-commerce retailer and its representative usually takes the form of the e-commerce retailer agreeing to pay compensation to the representative for sales that can be directly attributed to the solicitation activities of the representative.

For example, the representative may be a private club that agrees to actively refer its members and to solicit other persons to purchase products from the e-commerce retailer's Web site by providing a specialized link from the club's Web site to the e-commerce retailer's Web site. Alternatively, the club may refer persons directly to the e-commerce retailer's Web site with instructions to enter a code number or other information that will identify to the e-commerce retailer that the club is responsible for the referral. The sales that result from these activities can be tracked and a commission or other compensation is paid to the club based on the amount of resulting sales.

Under the New York State Tax Law and the Sales and Use Tax Regulations, the term *vendor* includes persons who solicit business within the State through employees, independent contractors, agents or other representatives and, by reason thereof, make sales to persons within the state of tangible personal property or services that are subject to sales tax. **Accordingly, if a business located outside New York State solicits sales of taxable tangible personal property or services through employees, salespersons, independent agents, or representatives located in New York State, the business must register as a vendor and obtain a *Certificate of Authority* for New York State sales tax purposes.** (Tax Law Section 1101(b)(8) and Sales and Use Tax Regulation Section 526.10(a)(3)).

As illustrated by the examples below, the physical presence in New York State of a representative of an e-commerce retailer soliciting sales or making or maintaining a market in New York on behalf of the e-commerce retailer, for commissions, referral fees or other compensation, is sufficient to require that retailer to register as a sales tax vendor. (See Tax Law Sections 1101(b)(8), 1131(1), 1134(a), Sales and Use Tax Regulations Section 526.10 and *Scripto Inc. v. Carson* (362 U.S. 207)). As a registered vendor, the e-commerce retailer must collect New York State and local sales taxes on **all** of its sales of taxable products and services

that are delivered within New York State, and must file the appropriate sales tax returns. However, a person is not considered a vendor merely because the person has advertising disseminated or displayed on the Internet. (See Tax Law Section 12 and TSB-M-97(1.1)S).

A business may apply for a *Certificate of Authority* by using the *New York State Online Permit Assistance and Licensing* link at Web site [www.nys-permits.org](http://www.nys-permits.org), or by completing Form DTF-17, *Application To Register For a Sales Tax Certificate of Authority*, and mailing it to the Tax Department to the address specified on the form. (See Tax Law Sections 1131(1) and 1134).

**Example 1:**

*XYZ Company (XYZ) is an Internet-based retailer of sporting goods specializing in downhill skiing equipment. XYZ is located in Vermont, where it has its administrative offices and its warehouse, which holds its inventory for sale. XYZ makes sales of its merchandise throughout the United States and has customers in New York State. The merchandise sold by XYZ is delivered by the U.S. Postal Service or by common carrier, such as United Parcel Service or Federal Express.*

*As part of its marketing plan, XYZ has entered into an agreement with Downhill Ski Club (Ski Club), which is based in Saratoga Springs, New York, whereby Ski Club will maintain links to various skiing equipment listed for sale on XYZ's retail Web site on the Club's own Web site. XYZ will pay a commission to Ski Club based on the amount of sales that XYZ makes that originate from the links on Ski Club's Web site. Ski Club uses the commissions as a fundraising activity to partially offset the expenses for the ski trips it sponsors. To maximize its commissions, Ski Club actively solicits its members and the local community to purchase new skiing equipment through the Ski Club's Web site by clicking on the link to XYZ's retail Web site and making their purchases from XYZ.*

*XYZ may have similar arrangements with other representatives in New York, but otherwise has no other additional connection with New York State that would cause XYZ to register as a New York State sales tax vendor. Based on its agreement with Ski Club, XYZ is considered to be soliciting business in New York through Ski Club, which is acting as an independent contractor, agent or other representative of XYZ, and making sales of taxable tangible personal property to persons within New York State. Therefore, XYZ must register as a New York sales tax vendor, collect New York State and local sales taxes, and file the required sales tax returns.*

**Example 2:**

*This example follows the same facts as in Example 1 except that Ski Club does not have its own Web site. Therefore, Ski Club solicits sales of XYZ's merchandise by directing its members and the local community to XYZ's Web site with instructions to enter a specific code number when making their purchase. By entering the code number, Ski Club is identified by XYZ as the organization responsible for referring the purchaser to the Web site, and a commission is paid to Ski Club by XYZ based on the resulting sales.*

*XYZ is considered to be soliciting business in New York through Ski Club, which is acting as an independent contractor, agent or other representative of XYZ, and making sales of taxable tangible personal property to persons within New York State. Therefore, XYZ must register as a*

*New York sales tax vendor, collect New York State and local sales taxes, and file the required sales tax returns.*

**Example 3:**

*John Smith is the author of a guide book to kayaking on New York lakes and rivers. The book is listed for sale on an e-commerce retail Web site. Mr. Smith maintains a Web site that contains a variety of information on kayaking and also contains a link to the e-commerce retail Web site through which visitors to his site may purchase his book. For each visitor that follows this link and purchases his book from the e-commerce retail Web site, Mr. Smith is entitled to receive compensation from the e-commerce retailer. Mr. Smith regularly speaks on the subject of kayaking at forums within the State. In the interest of earning commissions from the e-commerce retailer, he actively markets his book at these events by referring attendees to his Web site, where potential purchasers can click on the link to the e-commerce retailer's Web site and purchase his book.*

*Based on this arrangement, the e-commerce retailer is considered to be soliciting business through Mr. Smith, who is acting as an independent contractor, agent or other representative of the e-commerce retailer, and making sales of taxable tangible personal property to persons within New York State. Therefore, the e-commerce retailer must register as a New York sales tax vendor, collect the New York State and local sales taxes, and file the required sales tax returns.*

This memorandum is intended to clarify current policy and does not reflect any change in requirements for vendors doing business in New York State. **If an out-of-state business should have been registered based solely on the information contained within this memorandum, but was not registered, the department will not assess any prior sales taxes due or any civil or criminal penalties or interest for the failure to collect and remit any prior sales tax due, if the business registers and begins collecting sales tax by December 7, 2007.**

For further information on what tangible personal property and services are subject to tax and how to register for New York State sales tax purposes, see Publication 750, *A Guide to Sales Tax in New York State* that is available through the department Web site at [www.nystax.gov](http://www.nystax.gov), or by contacting our Sales Tax Information Center at 800-698-2909.

NOTE: A TSB-M is an informational statement of changes and clarification of the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.